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Supreme Court, U.S.
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No. 97-560

In The
Supreme Court of The United States
October Term 1997

STEPHEN MICHAEL RIDDER
Petitioner.

v.

CITY OF SPRINGFIELD, et al.
Respondent.

On Petition For Writ of Certiorari To the United States Court of Appeals For The Sixth Circuit

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Petitioner's Reply Brief to Respondent Lawrence

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PARTIES

1. For Petitioner: Stephen Michael Ridder, Plaintiff-Appellant.

2. For Respondents: City of Springfield, Ohio; Clark County, Ohio; Gene A. Kelly; Roger Evans; Robert Marcum; Ronald Menda; Robert Kerr; Dr. Walter Lawrence, Defendant-Appellees.

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REPLY TO BRIEF IN OPPOSITION

Respondent, Dr. Walter Lawrence's recollection of the facts in this case clearly demonstrate the need for this Court to comprehensively review the factual record. From even a brief review of the facts, it is very evident that Respondent Lawrence acted with complete and deliberate indifference to the medical needs of Petitioner Stephen Ridder during the period of his confinement in jail for a crime he obviously did not commit.

Respondent Lawrence inappropriately indicates that he should be absolved of any liability in this case because he formulated medical opinions that Petitioner Ridder did not need or require physical therapy because it "would not medically benefit the injured hand and that no ongoing need for medication existed." It seems that Respondent Lawrence maintains that his professional opinion can outweigh that of a treating physician who knew more about Petitioner Ridder's injury and the required regimen of therapy necessitated by the fact that there was going to be a future surgery on the hand. Also, it was obvious that Respondent Lawrence cannot dispute the fact that he was well aware of the need for therapy as his own records noted the severity and debilitating effects of the hand condition.

The factual record in this case is clear that Petitioner Ridder did not receive any of the required physical therapy until late October, 1988, well over a month after Respondent Lawrence's initial examination. Throughout the time period ranging from Respondent Lawrence's initial examination to Petitioner Ridder's release from jail, Respondent Lawrence had notice of Petitioner Ridder's serious medical needs. This is verified by not only Respondent Lawrence's own records and notations, but also through direct verbal communication with Petitioner Ridder. Despite this knowledge, Respondent Lawrence did nothing and was deliberately indifferent to Petitioner Ridder's medical needs. Because Lawrence did not render proper medical treatment despite Petitioner Ridder's pleas, Petitioner Ridder's hand condition quickly deteriorated. Ultimately, this resulted in

numerous surgeries to correct problems of Petitioner Ridder's hand. Even to present, Petitioner Ridder has a permanent disability in his hand.

ARGUMENT

This Honorable Court should not be persuaded by Respondent Lawrence's arguments in this matter as the factual record clearly indicates that summary judgment in his favor was not warranted at the District Court level. Petitioner, Stephen Ridder, has set forth five substantial reasons that clearly justify the issuance of a writ of certiorari in this matter. Respondent Lawrence's Opposition Brief, however, only addresses two of Petitioner Ridder's five issues presented for review. Therefore, in the interests of clarity and brevity, Petitioner Ridder will only address the two issues presented in Respondent Lawrence's Brief in Opposition.

I. There were genuine issues of material fact concerning Petitioner's Section 1983 and medical malpractice claims which warranted a denial of Respondent Lawrence's motion for summary judgment.

In this case, the combination of the acts and omissions on the part of all the Respondents caused Petitioner Ridder to suffer greatly as a result of Respondents' abuse of their governmental power. Specifically, Respondent Lawrence's acts and omissions in the medical treatment, or lack thereof, of Petitioner Ridder is actionable under 42 U.S.C. § 1983 and medical malpractice laws. The Respondents, including Lawrence, cannot be relieved of liability for completely ignoring Petitioner Ridder's serious medical needs which he was a detainee and inmate of the Clark County Jail. Because Petitioner Ridder

presented more than sufficient evidence for his claims asserted against Respondent Lawrence, summary judgment was improvidently granted and affirmed in this case.

The Due Process clause of the Fourteenth Amendment to the United States Constitution has been interpreted by this Court as requiring governmental agencies to provide medical care to pretrial detainees by administering prompt medical attention once the government is aware of the need for such attention. *Revere v. Massachusetts General Hospital*, 463 U.S. 239, 244-45 (1988). To maintain an actionable claim under the Due Process clause and section 1983, the plaintiff's evidence must demonstrate that the prison officials, which would include the jail physicians, were deliberately indifferent to the medical needs of their prisoners. *Estelle v. Gamble*, 429 U.S. 97 (1976); *Sosebee v. Murphy*, 797 F.2d 179 (4th Cir. 1978); *Fitzke v. Shappell*, 773 F.2d 720 (6th Cir. 1972). In proffering evidence to establish "deliberate indifference," the plaintiff need not prove that the prison officials consciously sought to inflict pain by withholding treatment. All a plaintiff is required to demonstrate is that more than mere negligence existed. *See Estelle*, 429 U.S. 97.

In this case, Petitioner Ridder clearly vocalized his serious medical needs to jail officials. This is supported by the fact that he reported his medical condition and need for therapy three times a week on his receiving-screening form that was completed on September 8, 1988. Respondent Lawrence was cognizant of the contents of this form as it was included in the chart that was prepared for the doctor prior to his examination of Petitioner Ridder.

Even if Respondent Lawrence failed to review Petitioner Ridder's response to question 26 on the receiving-screening form included in Petitioner Ridder's chart, the evidence clearly establishes that Petitioner Ridder specifically informed Respondent Lawrence of his need for therapy during the September 14, 1998 examination. Further,

Petitioner Ridder also informed Respondent Lawrence during the examination that he had been on pain medication, but had not taken any since his arrest and confinement because he did not have it with him and that the deputies instructed Petitioner Ridder that they could not administer medication without a prescription by the jail physician. Respondent Lawrence even made notations in the chart indicating the severity and debilitating effects of the hand injury to the nerves and tendons in the left hand and that the hand was pale as a result of insufficient blood supply.

Despite the uncontroverted facts, Respondent Lawrence deliberately chose to be indifferent to the serious medical condition of Petitioner Ridder. Petitioner Ridder was in need of his scheduled physical therapy which was a mandatory course of treatment in direct preparation for Petitioner Ridder's future surgery. Moreover, the physical therapy was necessary to facilitate proper healing of the left hand. Taken as a whole, Petitioner Ridder's hand injury was unquestionably a serious medical need. Not only was Petitioner Ridder prevented from attending his necessary and required physical therapy, but Respondent Lawrence plainly told Petitioner Ridder that he would not be transported to the hospital for his therapy and that he would receive proper care once he was in prison.

In addition, Petitioner Ridder was not given pain medication to alleviate his suffering, despite his repeated requests. Respondent Lawrence was keenly aware of Petitioner Ridder's need for pain medication as this was discussed during the September 14, 1988 examination. Yet, Respondent Lawrence overlooked these comments because he inappropriately opined that such medication was not needed.

After Petitioner Ridder's initial examination, Respondent Lawrence never saw or evaluated Petitioner Ridder's condition. Although Respondent Lawrence was completely aware of Petitioner Ridder's serious medical

needs, Respondent Lawrence did nothing. As the Sixth Circuit and other circuits have held, such inaction by prison officials amounts to deliberate indifference for the purpose of establishing section 1983 liability.

Inasmuch as summary judgment was not warranted for the section 1983 claim, the granting of summary judgment to Respondent Lawrence on the state law claims for medical malpractice was inappropriate. Supplemental jurisdiction existed over this state law claim, as the factual allegations which served as the basis for the section 1983 claims also established medical malpractice.

Under Ohio medical malpractice law, the plaintiff must show that the injury complained of was caused by the omission or failure to do some particular thing or things that a similar physician would have done under similar circumstances and that the injury was the proximate result of the omission. *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127. Reckless or indifferent conduct also constitutes medical malpractice under Ohio law. *Newton v. Ohio University School of Osteopathic Medicine* (1993), 91 Ohio App.3d 703.

Contrary to Respondent Lawrence's assertions, Petitioner Ridder has demonstrated a complete failure by the Respondent Lawrence to properly treat and care for his medical needs. Respondent Lawrence's arguments that Petitioner Ridder did not present any facts to refute the affidavit testimony of Lawrence is misplaced because the facts proffered in opposition to the summary judgment motion unequivocally indicated that Respondent Lawrence was derelict in his medical treatment of Petitioner Ridder's serious medical needs.

Because of these compelling facts, the District Court inappropriately granted summary judgment in favor of Respondent Lawrence. This Honorable Court must grant a writ of certiorari in this case to prevent a gross miscarriage of justice.

II. Petitioner was prejudiced by the Magistrate's conduct in the case because it effectively deprived Petitioner substantial justice.

Petitioner Ridder has demonstrated that the conduct of the United States Magistrate prejudiced Petitioner Ridder's pursuit of claims against Respondent Lawrence based upon the violations of Petitioner Ridder's civil and constitutional rights. The Magistrate's open hostility to Petitioner Ridder and his counsel is evident in the Magistrate's improper procedural rulings which eviscerated the case. In finding that there was no impropriety in the Magistrate's conduct, the Sixth Circuit has departed from accepted standards set forth by this Court regarding the impartiality of decision-makers.

As an example of the Magistrate's lack of impartiality, open hostility to Petitioner's counsel, and desire to expeditiously remove this case from his docket, the Magistrate prejudiced Petitioner Ridder's case by precluding Petitioner Ridder from utilizing his experts for failure to comply with Fed.R.Civ.P. 26(a)(2), as amended December 1, 1993. Respondent Lawrence inappropriately argues that the Magistrate's decision regarding the prohibition of naming experts did not result in the granting of summary judgment in its favor. Such an argument is clearly contradictory to Respondent Lawrence's prior position in his Opposition Brief wherein he alleges that Petitioner Ridder did not present evidence indicating that he deviated from an acceptable medical practice. How else could Petitioner Ridder further demonstrate Respondent Lawrence's medical malpractice other than the obvious facts indicating liability without having his treating physicians give their expert reports? Certainly, this Honorable Court can see through Respondent Lawrence's ill attempts to negate the fact that

Petitioner Ridder was prejudiced in his prosecution of this case by the Magistrate's conduct.

This case was originally filed on January 4, 1990. App. 193. After a procedural odyssey of events, the final Third Amended Complaint, that Petitioner Ridder was required to "stand or fall" upon, was filed on August 17, 1993. App. 343. Therefore, at the time when the Complaint and subsequent amendments were filed, Fed.R.Civ. P. 26 had not been amended.

Amendments to the Federal Rules of Civil Procedure may be applicable to then-pending cases, unless "to the extent that in the application of such rule in such proceedings would not be feasible or would work injustice..." 28 U.S.C. § 2074. In adopting the amendment to Fed.R.Civ.P. 26, this Honorable Court even stated that "this and all other rules amended effective December 1, 1993, are applicable to litigation pending on that date insofar as just and practicable." *Order adopting amendments to the Federal Rules of Civil Procedure*, 113 S. Ct. 475, 477 (1993).

Although the case was pending prior to the adoption of amendment to Civil Rule 26 and some of Petitioner Ridder's expert reports were already provided, these expert reports were held to the requirements of the amended Civil Rule 26. For example, the report of one of the investigators in the case, Richard Emmons, had been provided to the court and opposing counsel as an attachment to the Petitioner's Motion for Summary Judgment, filed in May, 1991. App. 262. Clearly, this report did not and should not have fallen within the provisions of the amended Rule as it had already been filed with the Court.

Moreover, throughout the litigation, Drs. Kaehr, Barre, Duncan, and Sammarco were disclosed as expert witnesses because of their status as Petitioner Ridder's treating physicians. The Magistrate overlooked the Advisory Committee Notes which provide that treating physicians may provide testimony without any requirement for a written

report. Specifically, the Advisory Committee Notes to the amended Rule 26 unambiguously stated, "a treating physician, for example, can be deposed or called to testify at trial without any requirement for a written report."

Obviously, the Magistrate's ruling prejudiced Petitioner Ridder's case against Respondent Lawrence because the inappropriate preclusion of the treating physicians expert opinions denied Petitioner Ridder the opportunity to present even more compelling evidence that Respondent Lawrence's medical treatment, or lack thereof, deviated from the appropriate standard of care given the factual circumstances of the case. Therefore, the application of the amended rule to the case and exclusion of Petitioner Ridder's experts at bar worked an injustice on Petitioner Ridder which clearly played a pivotal role in the outcome of the summary judgment motion filed by Respondent Lawrence.

In this case, application of the amended Rule was neither practicable or just. The exclusion of all of Petitioner Ridder's proposed expert witnesses completely eviscerated the Petitioner's case, and amounted to an abuse of discretion. However, the Magistrate's ruling did not effect Respondents' abilities to name experts. In fact, the Respondents never filed such expert reports and their experts were never barred. Therefore, the application of the amended Rule and exclusion of the treating physicians was erroneous. Indeed, justice was not deemed served.

Respondent Lawrence also attempts to defend the Magistrate's obvious hostility and personal ire towards Petitioner Ridder and his counsel. Indeed, there is no defense to the Magistrate's open displays of hostility and intemperance towards Petitioner Ridder's counsel.

With respect to Petitioner Ridder's section 1983 claim against Respondent Lawrence, the Magistrate held Petitioner Ridder to a more rigid pleading standard than the standard set forth in Fed.R.Civ.P. 8. The Magistrate

certainly held Petitioner Ridder to an arbitrary standard that required significantly more than what federal courts have determined that heightened pleading standard to be.

In addition, the Magistrate was consistently impatient in this case. For example, in the Magistrate's January 24, 1994 Order, the Magistrate reviewed the pleading history of the case to that date and determined that the pleading difficulties were solely the fault of Petitioner Ridder and his counsel. Without justification the Magistrate held that no other amendments were to be allowed because three opportunities had been given to amend; hence, "the case, and individual claims within it, must stand or fall on the Third Amended Complaint." App. 77-78. The Magistrate's stating that Petitioner Ridder's had to "stand or fall" with the Third Amended Complaint ignores and even contradicts the liberality of Fed.R.Civ.P. 15.

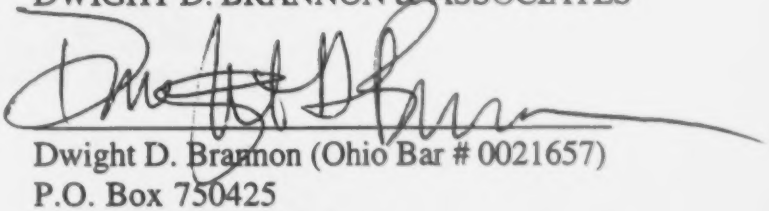
The Magistrate's decision was predicated on an incorrect belief that the length of time which elapsed by the pleading stage was solely upon Petitioner Ridder. Had the Magistrate correctly reviewed the record, it would have been evident that the time delays were also the fault of the Magistrate himself as he took seventeen (17) months to rule on pending motions to dismiss and for judgment on the pleadings. Therefore, it is obvious that the Magistrate's hostility and ire toward Petitioner Ridder and his counsel prejudiced the case, thereby denying substantial justice.

Moreover, the Magistrate disposed of this matter by entering summary judgment for all of the Respondents and against Petitioner Ridder on all of his claims. The Magistrate did so despite the fact that some 13 months earlier, he had denied the Respondents' Motion for Summary Judgment and no new facts had arisen in the case. From this fact alone, it is evident that Petitioner Ridder's case was prejudiced by the lack of impartiality and open hostility of the Magistrate. Therefore, Petitioner Ridder prays that this Honorable Court grant Certiorari in the case at bar.

CONCLUSION

Petitioner Stephen Ridder urges this Honorable Court to grant certiorari to resolve the injustice that has occurred in this case. Contrary to Respondent Lawrence's mistaken conclusions, there are significant compelling reasons for this Honorable Court to grant the writ. The factual record coupled with the inappropriate application of amended Fed. R. Civ. P. 26(a)(2)(B), effectively insured that justice could not prevail in this case. A review by this Honorable Court is most appropriate in this case so that a meaningful remedy under the law can be provided. Therefore, Petitioner Stephen Ridder respectfully prays that this Honorable Court grant a writ of certiorari.

Respectfully submitted,
DWIGHT D. BRANNON & ASSOCIATES



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CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing have been served upon Leo F. Krebs, Esq., Attorney for Respondent Lawrence, Suite 400, National City Center, 6 North Main Street, Dayton, Ohio 45402; Edward J. Dowd, Esq., Attorney for Respondents Clark County, Ohio, and Gene Kelly, 205 East First Street, Dayton, OH 45402; John R. Butz, Esq., Attorney for Respondents Evans, Marcum, Menda, and Kerr, 125 East McCreight Avenue, Springfield, OH 45504; and Robin N. DeBell, Esq., Attorney for Respondent City of Springfield, 76 East High Street, Springfield, OH 45502; by regular U.S. mail this 17 day of November, 1997.

Dwight D. Brannon